No. 76-103

In the Supreme Court of the United States

OCTOBER TERM, 1976

DR. ARTURO RIOS, et al.,

Appellants,

vs.

NOLAN B. JONES, et al.,

Appellees.

Appeal from the Supreme Court of Illinois

JURISDICTIONAL STATEMENT

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OPINIONS BELOW

The Opinion of the Illinois Appellate Court is reproduced in Appendix A herein, at pages App. 1 through 13, and is reported in 25 Ill. App. 3d 381 and in 323 N.E. 2d 380.

The Opinion of the Illinois Supreme Court is reproduced in Appendix C herein, at pages App. 16 through 24, and no citation to the exact volume or page is as yet available but will, in the future, be reported in ..... Ill. 2d ....., ... N.E. 2d .....

GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOLVED

The plaintiffs are 62 Illinois civil service physicians with "tenure on the basis of merit and fitness" who have been employed in Illinois State Hospitals for a number of years—most of them over 10 years and some of them over 20 years.[1]

Recently, Illinois passed a statute requiring these civil service physicians to pass new qualifying medical examinations, and their failure to pass such new qualifying examinations will result in the following described consequences. The Illinois Appellate Court stated (App. page 2):

> "They [the plaintiffs] were informed by the defendants, the Directors of the Department of Personnel, Registration and Education and Mental Health that, unless they took and passed academic medical examinations pursuant to Public Act 77-2757, they would lose their employment and civil service status."

[1] There is also pending in the Circuit Court of Cook County, Illinois, another identical case, entitled *Dr. Angeles S. Santos, et al.* v. *Nolan B. Jones, et al.*, Case No. 74 CH 2201, involving 29 additional Illinois civil service physicians, represented by the same counsel. The *Santos* case is held in abeyance awaiting the result of the final decision in the case at bar. These are "public records." (Ill. Rev. Stat., 1975, Ch. 25, par. 16, and Ch. 116, par. 43.103) The United States Supreme Court takes judicial notice of lower court proceedings even though they are unpublished. For example, see *Shea* v. *Vialpando*, 416 U.S. 251, 256 (1974), where the Supreme Court referred to *Adams* v. *Parham*, Civil Action No. 16041 (ND Ga., Apr. 14, 1972) (unpublished); and *Campagnuolo* v. *White*, Civil Action No. 13968 (Conn. June 22, 1972) (unpublished).

The Illinois Supreme Court stated (App. page 18):

> "After the passage of Public Act 77-2757, the plaintiffs were informed that they would lose their employment unless they passed a medical examination."

Furthermore, the Illinois statute governing civil service expressly and specifically authorizes "layoffs by reason of . . . material change in duties." (Ill. Rev. Stat., 1975, Ch. 127, par. 63b108b.13).

The background of the plaintiffs' "civil service status" is, as shown by the record (A. 33-34),[2] as follows:

For the last several decades there has been a shortage of physicians in the State of Illinois. The number of graduates of American medical schools was not sufficient to supply the American public's demand for medical services. As a consequence, the State of Illinois was unable to obtain a sufficient number of physicians to render medical services to patients in Illinois State hospitals. This problem was further aggravated by the fact that American physicians were earning, in private practice, much more than the State of Illinois was ready to pay its hospital

[2] Throughout this Jurisdictional Statement, the symbol "A" is employed because, under Illinois Supreme Court Rule 341(e)(6), this is the appropriate reference designation to the page of the record on appeal. The symbol "A" stands for the term "Abstract of Record" which was prepared and printed for the Illinois Appellate Court and the Illinois Supreme Court. In this case, which was decided on the plaintiffs' complaint and the defendants' motion to dismiss the complaint, the printed Abstract of Record has reproduced therein the pleadings *verbatim*, omitting only the title of the case at the beginning of each pleading. Rule 12 of the United States Supreme Court provides that where the record was printed for the court below, such printed record may be used in the same form in this Court. The number or numbers following the letter "A" refer to the page or pages of the printed record where the material stated appears.

physicians. To alleviate this problem, the State of Illinois has, for the last several decades, recruited over 400 physicians who graduated and received the degree of Doctor of Medicine from recognized and accredited Colleges of Medicine of foreign countries and were licensed to practice medicine in such foreign countries. The State of Illinois, as an inducement to the acceptance by the physicians of positions in Illinois State hospitals, offered the physicians the security of Illinois civil service employment and the benefits of the State employees' retirement system of Illinois. To qualify under the Illinois civil service law, each physician was required to serve a one year internship in an American hospital which had been approved by the Illinois Department of Registration and Education and each physician had to pass the Illinois civil service examination for physicians. Each one of the plaintiff physicians herein, before being hired as a physician by the State of Illinois, served the required one year internship in an American hospital approved by the Illinois Department of Registration and Education and each physician successfully passed the Illinois physicians' civil service examination, and, upon rendering competent and meritorious medical services to Illinois State hospitals, was promoted by the State of Illinois with substantial increases in salary under the Illinois civil service laws. Every plaintiff physician is a naturalized citizen of the United States (A. 33-34).

The fact is that the plaintiff civil service physicians are medically as well or better qualified than the average Illinois licensed physician, as shown by the following:

1. Each plaintiff graduated from a medical school recognized and approved by the Illinois Department of Registration and Education (A. 34) as "schools which are reputable and in good standing." (Ill. Rev. Stat. 1975, Ch. 91, par. 14a)

2. Each plaintiff passed an examination in medicine of the government by which he was licensed. (A. 34)

3. Each plaintiff served an internship in an American hospital (A. 33) which hospital was approved by the Illinois Department of Registration and Education. (Ill. Rev. Stat., 1975, Ch. 91, par. 14a)

4. Each plaintiff passed the Illinois Civil Service test for physicians (A. 33-34) which, by virtue of the Illinois Statute (Ill. Rev. Stat., 1975, Ch. 127, par. 63b108b.1), included the following: "investigation of education; investigation of experience; test of cultural knowledge; test of capacity; test of knowledge; test of manual skill; test of linguistic ability; test of character; test of physical fitness; test of psychological fitness."

5. Each plaintiff served a probationary period of one year. (Ill. Rev. Stat., 1975, Ch. 127, par. 63b108b.6)

6. Each plaintiff physician acquired "tenure on the basis of merit and fitness." (Ill. Rev. Stat., 1975, Ch. 127, par. 63b108b)

7. Each plaintiff was evaluated every year by the superintendent of the Illinois State institution in which he served and was found to be able and efficient as a physician.

8. Each plaintiff was promoted (A. 34) based on his "qualifications, record of performance, seniority and conduct." (Ill. Rev. Stat., 1975, Ch. 127, par. 63b108b.2)

9. Each plaintiff received annual salary increases (A. 34) based on "performance records." (Ill. Rev. Stat., 1975, Ch. 127, par. 63b108b.14)

10. Each plaintiff is at all times subject to discipline and removal for cause by the Illinois Civil Service Commission. (Ill. Rev. Stat., 1975, Ch. 127, par. 63b111)

11. Each plaintiff's competency and ability as a physician has been confirmed by a number of years of experience, as is evident by the fact that no complaint was ever filed against any of the plaintiffs with the Illinois Civil Service Commission.

The facts hereinabove stated are shown in the records of the Department of Personnel of the State of Illinois, which are "public records" (Ill. Rev. Stat., 1975, Ch. 127, par. 63b114), and courts take judicial notice of them. (A. 6) [3]

The federal constitutional issues were raised (1) in the plaintiffs' Amended Complaint for injunction and other relief in the Circuit Court of Cook County, Illinois, (2) in the briefs in the Illinois Appellate Court, and (3) in the briefs in the Illinois Supreme Court, as required by Illinois Supreme Court Rule 341. The Amended Complaint, filed on April 12, 1973, stated the federal constitutional issues substantially as follows:

> (a) The right to practice a lawful business or profession is a property right within the meaning of the constitutional provision of "due process of law", protected by the 14th Amendment to the Constitution of the United States. (A. 11).
>
> (b) The plaintiffs herein who have lawfully practiced medicine in the State of Illinois for many years—for example, Dr. Sanchez for 20 years (now 23 years), Dr. Wroblewski for 17 years (now 20 years), Dr. Kozlowski for 12 years (now 15 years), Dr. Hurtado for 11 years (now 14 years)—may they now, after these

[3] In *Nordine* v. *Illinois Power Co.*, 32 Ill. 2d 421, 428, 206 N.E.2d 709, 713 (1965), the Illinois Supreme Court said that the documents involved *"are public records, . . . and as such we take judicial notice of them"*. (Emphasis supplied.)

> many years be required to subject themselves to examination for the practice of medicine and to be deprived of their livelihood if they fail in such an examination on some theoretical subject. (A. 11-12).
>
> (c) To require an examination of these plaintiffs, who have had many years of experience as lawful physicians is purely arbitrary and unreasonable, and, as to these plaintiffs, the amendatory statute herein involved, is in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States. (A. 12).
>
> (d) The amendatory statute herein involved is discriminatory in that it is directed against naturalized citizens of the United States who have received their medical education in universities outside of the United States, and is in violation of the "Privileges and Immunities" provision of Section 2 of Article IV of the Constitution of the United States. (A. 12).

To the Amended Complaint, the defendants' filed a motion to dismiss and the case was decided on the pleadings. (A. 38-39, 50-51).[4]

The Illinois court proceedings in this case are succinctly stated in the Illinois Supreme Court Opinion, as follows:

[4] As to a decision rendered on the pleadings, the Illinois and Federal rules of law are identical, namely, the court must "take as true the material facts alleged in" the complaint. *Hospital Building Co.* v. *Rex Hospital Trustees,* 48 L.Ed. 2d 338, 341 (decided May 24, 1976); *Mandeville Island Farms Inc.* v. *American Crystal Sugar Co.,* 334 U.S. 219, 222 (1948). In *Edgar County Bank & Trust Co.* v. *Paris Hospital, Inc.,* 57 Ill.2d 298, 305, 312 N.E. 259, 262 (1974), the Illinois Supreme Court said that "the well pleaded allegations of fact contained" in the complaint "must be taken as true". Likewise, in *Acorn Auto Driving School* v. *Board of Education,* 27 Ill. 2d 93, 96, 187 N.E.2d 722, 724 (1963), the Illinois Supreme Court said that "The motion to dismiss filed by the defendants . . . admits all facts properly pleaded in the complaint."

"The plaintiffs filed a complaint in the circuit court of Cook County alleging that Public Act 77-2757 was unconstitutional and requesting that the defendants be enjoined from enforcing it. The circuit court held that the Act was unconstitutional as to those plaintiffs having ten years or more of civil service and enjoined the defendants from enforcing the Act as to those plaintiffs. The court denied injunctive relief to the other plaintiffs.

"The plaintiffs who were denied relief appealed to the appellate court, and the defendants cross-appealed from the order granting injunctive relief to the plaintiffs having ten years or more of service. The appellate court, holding that Public Act 77-2757 was unconstitutional, affirmed the order granting the injunction to the plaintiffs with ten or more years service and reversed the order denying relief to the other plaintiffs."

The Illinois Supreme Court then concluded its opinion as follows:

"For the foregoing reasons, we uphold the constitutionality of section 13a of the Medical Practice Act. The Judgment of the appellate court is reversed.

"The cause is remanded to the circuit court of Cook County for further proceedings not inconsistent with this opinion."

Thus, under this ruling of the Illinois Supreme Court, the only function the trial court may perform on the remand is the entry of a "formal" order dismissing the plaintiffs' complaint.

The Illinois Supreme Court rendered and entered its judgment in the case at bar on May 28, 1976 (App. pages 14 and 15), and denied the petition for rehearing on June 28, 1976 (App. pages 25 and 26). The notice of appeal with proof of service thereof on adverse parties was filed in the Illinois Supreme Court on July 2, 1976 (App. pages

27 through 29) and on July 6, 1976, the Illinois Supreme Court entered an order "that the mandate of this Court is hereby stayed pending disposition of the appeal by the United States Supreme Court." (App. page 30).

Title 28 U.S.C., Section 1257, provides:

"Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:

* * *

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

In *Mills* v. *Alabama,* 384 U.S. 214 (1966), this Court said at pages 217-218:

"The State has moved to dismiss this appeal on the ground that the Alabama Supreme Court's judgment is not a final judgment and therefore not appealable under Sec. 1257. The State argues that since the Alabama Supreme Court remanded the case to the trial court for further proceedings not inconsistent with its opinion (which would include a trial), the Supreme Court's judgment cannot be considered final. This argument has a surface plausibility, since it is true the judgment of the State Supreme Court did not literally end the case. It did, however, render a judgment binding upon the trial court that it must convict Mills under this state statute if he wrote and published the editorial. Mills concedes that he did, and he therefore has no defense in the Alabama trial court. Thus if the case goes back to the trial court, the trial, so far as this record shows, would be no more than a few formal gestures leading inexorably towards a conviction, and then another appeal to the Alabama Supreme Court for it formally to repeat its rejection of Mills' constitutional contentions whereupon the

case could then once more wind its weary way back to us as a judgment unquestionably final and appealable. Such a roundabout process would not only be an inexcusable delay of the benefits Congress intended to grant by providing for appeal to this Court, but it would also result in a completely unnecessary waste of time and energy in judicial systems already troubled by delays due to congested dockets. The language of Sec. 1257 as we construed it in Pope v. Atlantic Coast Line R. Co., 345 U.S. 379, 381-383, does not require a result leading to such consequences. See also Construction Laborers v. Curry, 371 U.S. 542, 548-551; Richfield Oil Corp. v. State Board, 329 U.S. 69. Following those cases we hold that we have jurisdiction."

In *Organization for a Better Austin* v. *Keefe,* 402 U.S. 415 (1971), this court cited *Mills* v. *Alabama, supra,* and *Construction Laborers* v. *Curry, supra,* held that "we are not without power to decide this case" and said at page 419:

"The injunction is termed a 'temporary' injunction by the Illinois courts. We have therefore considered whether we may properly decide this case. 28 U.S.C. Sec. 1257. We see nothing in the record that would indicate that the Illinois courts applied a less rigorous standard in issuing and sustaining this injunction than they would with any permanent injunction in the case. Nor is there any indication that the injunction rests on a disputed question of fact that might be resolved differently upon further hearing. Indeed, our reading of the record leads to the conclusion that the issuance of a permanent injunction upon termination of these proceedings will be little more than a formality."

In *North Dakota Pharmacy Board* v. *Snyders Stores,* 414 U.S. 156 (1973), the highest court of the State held a state statute unconstitutional and remanded the case to the state licensing board to conduct an administrative hearing "sans the constitutional issue." The United States Supreme Court held that the judgment of the highest court of the State was "final" within the meaning of Title 28 U.S.C., Section 1257, because the licensing board had no way of preserving the constitutional question after remand, except by defying the order of the highest court of the State and again denying the application for a license.

In *Miami Herald Publishing Co.* v. *Tornillo,* 418 U.S. 241 (1974), this Court held that under Title 28 U.S.C., Section 1257, which limits the United States Supreme Court's review of state court decisions to "final" judgments, a decision of a state supreme court (1) reversing a state trial court's judgment that a state statute was unconstitutional, and (2) remanding the case to the trial court for further proceedings, constitutes a final judgment and makes the case ripe for review by the United States Supreme Court.

It is, therefore, clear that the decision of the Illinois Supreme Court is a "final" judgment and ripe for review by the Supreme Court of the United States under Title 28 U.S.C., Section 1257.

In the consideration of this case, two Illinois statutes require attention: (1) Section 13a of the Illinois Medical Practice Act, and (2) the Illinois Civil Service Law.

1. Section 13a of Illinois Medical Practice Act

The history of this Section is concisely stated in the Illinois Supreme Court opinion as follows (App. pages 16 through 18):

"That section first became law in 1951 and provided that the Department of Registration and Education had the authority to issue a limited license to practice medicine in all its branches to any applicant who was 21 years of age or over, of good moral character, had such training at schools which were reputable and in good standing as under the circumstances the Department deemed sufficient and had been appointed a

physician in a hospital maintained by the State. (Ill. Rev. Stat. 1951, ch. 91, par. 14a.) The limited license enabled a physician to practice medicine only in the hospital designated on his license and only under the supervision of a medical officer of that hospital. The Act did not provide that the limited license would expire after a certain time period.

Section 13a was amended in 1957 to add the requirement that the applicant serve a one-year internship at a hospital approved by the Department before a limited license could be issued to him. The 1957 amendment also referred to the limited license as a State hospital permit. (Ill. Rev. Stat. 1957, ch. 91, par. 14a.) In addition, the amendment declared that the permit would entitle the physician to practice medicine in all of its branches in hospitals or facilities maintained by the Department of Public Welfare.

In 1961, the reference in the 1957 amendment to the Department of Public Welfare was expanded to include the Department of Public Health. In 1963 the reference to the Department of Public Welfare was replaced by reference to the Department of Mental Health.

Section 13a was significantly amended in 1965. (Ill. Rev. Stat. 1965, ch. 91, par. 14a.) That amendment provided, *inter alia,* that no State hospital permits could be issued for an indefinite period of time, that doctors who had previously been issued permits could apply for renewal of the permits, that each renewal was effective for a period of two years and that the doctors who had previously been issued permits could apply for renewals every two years.[5] The amendment also stated that each person who was issued his first State hospital permit after July 1, 1966, would be entitled to receive no more than three renewals of the

[5] **It should be specially noted that the licenses which were issued between 1951 and 1965 had no durational limitations and required no renewals whatsoever; and most of the physician-plaintiffs herein involved received their licenses prior to 1965.**

permit. Any applicant receiving his first permit after July 1, 1966, was required to submit proof to the Department, as a condition precedent to issuance of the original permit and each subsequent renewal, that he was pursuing a course of instruction and study that would enable him to pass an examination for the issuance of a license to practice medicine in all its branches.

Section 13a was again amended in 1972 by Public Act 77-2757. That amendment states in relevant part that:

> 'As a condition precedent to the renewal of any state hospital permit on July 1, 1974 or on any renewal date thereafter, the permit holder shall be required to show proof of having passed an examination given by the Department of Registration and Education or to have passed an examination deemed by the Department to have been at least equal in all substantial respects to the Department's examination. The Department shall have no authority to issue a renewal of a permit to an individual who has failed to pass this examination. An applicant for renewal of a state hospital permit must submit proof to the Department of Registration and Education that he is pursuing such course of instruction and study as will provide the applicant with the necessary qualifications to successfully pass an examination for the issuance of a license to practice medicine in all of its branches.' (Laws of 1972, at 2022.)''

The Section was again amended in 1974, and now reads as follows (Ill. Rev. Stat., 1975, Ch. 91, par. 14a):

> "Section 13a. Until July 1, 1975, the Department of Registration and Education may in its discretion and subject to the further limitations of this Section issue a state hospital permit, (also referred to in this Act as a limited license) to practice medicine in all its branches to any applicant who shall furnish the Department with satisfactory proof under oath that he is

21 years of age or over, of good moral character, has had such training at schools which are reputable and in good standing as under the circumstances the Department shall deem sufficient, has served a one-year internship in a hospital approved by the Department and has been appointed a physician in a hospital maintained by the State. In determining moral character under this Section, the Department may take into consideration any felony conviction of the applicant, but such a conviction shall not operate as a bar to registration. The fee to be paid for a state hospital permit is $25. Such state hospital permit shall entitle a physician to practice medicine in all its branches in hospitals or facilities maintained by the Illinois Department of Mental Health and Developmental Disabilities, the Illinois Department of Public Health, Illinois Department of Children and Family Services or affiliated training facilities where such practice is conducted under the authority of the Director of the Illinois Department of Mental Health and Developmental Disabilities, the Director of the Illinois Department of Public Health, or the Director of the Illinois Department of Children and Family Services and under supervision of a physician duly licensed under this Act to practice medicine in all its branches.

All state hospital permits in effect on August 4, 1974 or issued prior to July 1, 1975 shall expire on July 1, 1975. Each person holding a state hospital permit on August 4, 1974 or who receives a permit thereafter may apply for a renewal of his permit prior to July 1, 1975. Any renewal shall be valid until the first day of July following the date of the renewal. The fee to be paid for each renewal of a state hospital permit is $10.00. The Department of Registration and Education shall not issue more than one renewal to any state hospital permit holder after July 1, 1975, and shall have no authority to issue a state hospital permit for an indefinite period of time.

After August 4, 1974, as a condition precedent to the issuance or renewal of any state hospital permit,

the applicant or permit holder shall be required to show proof of having passed, during the three-month period immediately prior to his application for permit or renewal, a clinical examination in the general medical fields of either (1) neurology and psychiatry, or (2) general medicine, or both, given by the Department of Registration and Education or to have passed, during said three-month period, an examination deemed by the Department to have been at least equal in all substantial respects to the Department's examination. The Department shall have no authority to issue a renewal of a permit to an individual who has failed to pass this examination. An applicant for renewal of a state hospital permit shall receive such permit only in the general medical field of competency demonstrated by his passing one or more of the aforesaid clinical examinations and his practice of medicine in all of its branches in any state facility shall be restricted to such general medical field. In addition the applicant must submit proof to the Department of Registration and Education that he is pursuing such course of instruction and study as will provide the applicant with the necessary qualifications to successfully pass an examination for the issuance of a license to practice medicine in all of its branches. No state hospital permit or renewal thereof shall be issued to such applicant by the Department of Registration and Education unless such satisfactory proof is furnished by the applicant that he is pursuing such course of instruction and study. A state hospital permit may be revoked by the Department at any time after the holder thereof becomes qualified for examination for a regular license to practice medicine according to the terms of this Act, or in the event that information furnished the Department by the permit holder in support of his application for an original permit or a renewal is found to be false.

The legislative intent of this amendatory Act of 1974 is declared to be to extend to the Department of

Mental Health and Developmental Disabilities and the Department of Registration and Education a period of time in which to devise a plan either to replace the state hospital permit system or to prepare all permit holders to qualify for a license to practice medicine in all its branches. The Department of Mental Health and Developmental Disabilities shall therefore take the necessary action to replace such system or to qualify such permit holders and shall report its findings and recommendations to the Governor and the General Assembly on or before April 1, 1975."

2. Illinois Civil Service Law

The material portions of the Illinois Civil Service Law are as follows (Ill. Rev. Stat., 1975, Ch. 127, pars. 63b108, 63b108b, 63b108b.1, 63b108b.2, 63b108b.6, 63b108b.13, 63b 108b.14, 63b108b.15, 63b108b.16, 63b111, 63b111a, and 63b 114):

63b108. The Director of Personnel shall prepare and submit to the Civil Service Commission proposed rules for all positions and employees subject to this Act.

• • •

The rules and amendments thereto shall provide:

• • •

63b108b. For positions in the State service subject to the jurisdiction of the Department of Personnel with respect to selection and tenure on the basis of merit and fitness, those matters specified in Sections 8b.1 through 8b.17.

63b108b.1. For open competitive examinations to test the relative fitness of applicants for the respective positions. Tests shall be designed to eliminate those who are not qualified for entrance into or promotion within the service, and to discover the relative fitness of those who are qualified. The Director may use any

one of or any combination of the following examination methods which in his judgment best serves this end: investigation of education; investigation of experience; test of cultural knowledge; test of capacity; test of knowledge; test of manual skill; test of linguistic ability; test of character; test of physical fitness; test of psychological fitness.

• • •

63b108b.2. For promotions which shall give appropriate consideration to the applicant's qualifications, record of performance, seniority and conduct. An advancement in rank or grade to a vacant position constitutes a promotion.

• • •

63b108b.6. For a period of probation not to exceed one year before appointment or promotion is complete and during which period a probationer may with the consent of the Director of Personnel, be discharged or reduced in class or rank, or replaced on the eligible list.

• • •

63b108b.13. For layoffs by reason of lack of funds or work, abolition of a position or material change in duties or organization, and for reemployment of employees so laid off, giving consideration in both layoffs and reemployment to performance record and seniority in service.

63b108b.14. For the promotion of staff development and utilization by means of records of performance of all employees in the State service. The performance records may be considered in determining salary increases, provided in the pay plan, and as a factor in promotion tests. The performance records shall be considered as a factor in determining salary decreases, the order of layoffs because of lack of funds or work, reinstatement, demotions, discharges and geographical transfers.

63b108b.15. For the imposition as a disciplinary measure of suspension from State service without pay for not longer than 30 days. Notice of such disciplinary action shall be given in writing immediately to the Director of Personnel who may review any such action.

63b108b.16. For hearing before discharge or demotion with the prior approval of the Director of Personnel only for cause after appointment is completed, after the person to be discharged or demoted has been presented in writing with the reasons requesting such discharge or demotion. The statement of reasons shall be filed immediately with the Department of Personnel.

* * *

63b111. No officer or employee under jurisdiction B, relating to merit and fitness, who has been appointed under the rules and after examination, shall be removed or discharged, demoted or suspended for a period of more than 30 days, except for cause, upon written charges approved by the Director of Personnel, and after an opportunity to be heard in his own defense if he makes written request to the Commission within 15 days after the serving of the written charges upon him. Upon the filing of such a request for a hearing, the Commission shall grant a hearing within 30 days. The time and place of the hearing shall be fixed by the Commission, and due notice thereof given the appointing officer and the employee. The hearing shall be public, and the officer or employee is entitled to call witnesses in his own defense and to have the aid of counsel. The finding and decision of the Commission, or the approval by the Commission of the finding and decision of the officer or board appointed by it to conduct such investigation, shall be rendered within 60 days after the receipt of the transcript of the proceedings. If the finding and decision is not rendered within 60 days after receipt of the transcript of the proceedings, the employee shall be considered to be reinstated

and shall receive full compensation for the period for which he was suspended. The finding and decision of the Commission or officer or board appointed by it to conduct such investigation, when approved by the Commission, shall be certified to the Director, and shall be forthwith enforced by the Director. In making its finding and decision, or in approving the finding and decision of some officer or board appointed by it to conduct such investigation, the Civil Service Commission may for disciplinary purposes, suspend an employee for a period of time not to exceed 90 days, and in no event to exceed a period of 120 days from the date of any suspension of such employee, pending investigation of such charges. If the Commission certifies a decision that an officer or employee is to be retained in his position and if it does not order a suspension for disciplinary purposes, the officer or employee shall receive full compensation for any period during which he was suspended pending the investigation of the charges.

Nothing in this Section shall limit the authority to suspend an employee for a reasonable period not exceeding 30 days.

63b111a. All final administrative decisions of the Civil Service Commission hereunder shall be subject to judicial review pursuant to the provisions of the "Administrative Review Act", approved May 8, 1945, as heretofore or hereafter amended. The term "administrative decision" is defined as in Section 1 of the "Administrative Review Act".

* * *

63b114. The records of the Department, including original and promotional eligible registers, except such records as the rules may properly require to be held confidential for reasons of public policy, shall be public records and shall be open to public inspection, subject to reasonable regulations as to the time and manner of inspection which may be prescribed by the Director.

QUESTIONS PRESENTED BY THIS APPEAL

1. May State Civil Service employees,

   (a) who were granted by State statute "tenure on the basis of merit and fitness",

   (b) who have rendered many years of service—most of them over 10 years and some of them over 20 years,

   (c) who have been given promotions and salary increases, and

   (d) against whom no complaint was ever filed,

be subjected by the State to new qualifying examinations and be discharged from their employment if they fail to pass such new qualifying examinations?

2. Where a State has granted to naturalized American citizens, who received their medical education outside of the United States, licenses "to practice medicine in all of its branches" in State hospitals

   (a) after the State has approved the foreign medical schools from which they graduated and received the professional degree of Doctor of Medicine,

   (b) after the State has approved their internships which were served in American hospitals,

   (c) after the State has allowed them to practice medicine in State hospitals for a number of years—most of them over 10 years and some of them over 20 years—without any complaint against them, and the State has given them promotions and increases in salary, and

   (d) the highest Court of the State found that "the doctors who held State hospital permits had property rights which were protected by due process" (App. page 22),

may the State discriminate against these naturalized citizens by requiring them to pass new medical examinations without requiring licensed American medical graduates to be likewise re-examined?

STATEMENT OF THE CASE

To avoid repetition, we incorporate herein by reference thereto the material set out at pages 2 through 11 of this Jurisdictional Statement.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

I.

THE STATE STATUTE HEREIN INVOLVED DESTROYS CIVIL SERVICE RIGHTS IN VIOLATION OF DUE PROCESS OF LAW.

In *Board of Regents* v. *Roth,* 408 U.S. 564 (1972), the Supreme Court of the United States pointed out that "*in the case of public employment*" of persons who hold their employment "*under tenure provisions*", the employees "*have interests in continued employment that are safeguarded by due process*" (408 U.S. at pp. 576-577).

In *Sugarman* v. *Dougall,* 413 U.S. 634 (197[illegible], the United States Supreme Court held that the right to civil service employment is a fundamental right which is protected by the 14th Amendment to the Constitution of the United States, so that a State may not even exclude a resident alien therefrom.

In *Arnett* v. *Kennedy,* 416 U.S. 134 (1974), six members of the United States Supreme Court held that where a statute provides that an employee may be discharged only for cause, the employee has a property interest which is entitled to constitutional protection. In *Bishop* v. *Wood,* 44 U.S. L. W. 4820, decided by the United States Supreme Court on June 10, 1976, the majority opinion, in footnote 8, cited *Arnett* v. *Kennedy* and said: "In that case the Court concluded that because the employee could only be discharged for cause, he had a property interest which was entitled to constitutional protection." In the case at bar, the plaintiffs acquired "tenure on the basis of merit and fitness" (Ill. Rev. Stat., 1975, Ch. 127, par. 63b108b) and the plaintiffs are subject to discipline and removal by the Illinois Civil Service Commission *only for cause* (Ill. Rev. Stat., 1975, Ch. 127, par. 63b111). It is, therefore, clear that the plaintiffs have a property right in their

employment which entitles them to constitutional protection.

If a State or Federal legislature has the power to subject the plaintiffs, who are and have been civil service employees for many years—most of them over 10 years and some of them over 20 years—with "tenure on the basis of merit and fitness" (Ill. Rev. Stat., 1975, Ch. 127, par. 63b108b) to qualifying reexamination and to discharge them if they fail to pass such new qualifying examination, then legislatures may at any time they desire destroy the protection of any or all other civil service employees.[6] Such

[6] The 1970 United States Census of Population shows the total number of persons gainfully employed in the United States was 78,627,000. Of these, 13,028,000 persons were engaged in public employment. The Federal Government employed 2,881,000 persons and the State of Illinois and governmental units employed 444,352 persons.

Courts take judicial notice of information contained in the United States census. *Worcester National Bank* v. *Cheney,* 94 Ill. 430, 432 (1880); *United States* v. *United Bro. of Carpenters,* 457 F.2d 210, 214 (7th Cir., 1972) cert. denied 409 U.S. 851; *Daniel* v. *Davis,* 220 F. Supp. 601, 603 (1963); *Baker* v. *Clement,* 247 F. Supp. 886, 895 (1965); *Carter County* v. *Huett,* 303 Mo. 194, 200, 259 S.W. 1057, 1058 (1924); *Page* v. *McClure,* 79 Vt 83, 88, 64 At. 451, 452 (1906). In *Stratton* v. *Oregon City,* 35 Ore. 409, 411, 60 Pac. 905, 906 (1900), the Court said: "The contention that the complaint does not state sufficient facts is untenable, as the court will take judicial cognizance of the official census, taken in pursuance of the laws and regulations of the state or the United States: *Denney* v. *State ex rel.,* 144 Ind. 503, 525 (31 L. R. A. 726, 42 N.E. 929); *Worcester National Bank* v. *Cheney,* 94 Ill. 430; *People* v. *Williams,* 64 Cal. 87 (2 Pac. 393). This being the case, it is unnecessary to state the number of inhabitants in the complaint: *City of Huntington* v. *Cast,* 149 Ind. 255 (48 N.E. 1025). Such is the rule, both at common law and under the code: 12 Enc. Pl. & Prac. 1. It is only necessary to observe, therefore, that under the last census of the United States, taken in pursuance of law, it appears that Oregon City had a population of more than twenty-five hundred." To the same effect are 14 Am. Jur. 2d, Census, Sec. 12, p. 772 and 31A C.J.S. Sec. 98, p. 144, citing numerous cases from many jurisdictions.

a holding will effect many millions of citizens who have relied on this important job security and have accepted lower compensation than generally prevails in professional practice in reliance on this security, and have planned their lives accordingly. Such a holding is not only unconstitutional but is basically unfair and unjust to a large segment of the working class which has for many years toiled and rendered faithful services to governmental agencies—a truly catastrophic and tragic result which decency prohibits.

If the more than 10,000,000 civil service employees in the United States may be subjected, at any time a legislature desires, to new qualifying examinations, then civil service in the United States is a myth and a phantom, and civil service workers, who have spent their best energies, at a generally lower compensation than prevailed in private industry, with the object of having job security, have relied on a foundation of quicksand and have placed their trust in a false messiah and the legislatures which have brought about such results are, at least morally, guilty of practicing deception upon these loyal workers through enticement and concealment. On the other hand, if the Illinois statute herein involved is made operative prospectively and not retrospectively, then honesty and fairness in government will be the order of the day.

II.

THE STATUTE HEREIN INVOLVED AIMS TO DISCRIMINATE AGAINST NATURALIZED AMERICAN CITIZENS AND IS CONSTITUTIONALLY INVALID.

The statute "is discriminatory in that it is directed against naturalized citizens of the United States who have received their medical education in universities outside of the United States, and is in violation of the 'Privileges and Immunities' provision of Section 2 of Article IV of the Constitution of the United States." (A. 12)

Section 8 of Article I of the United States Constitution provides that "The Congress shall have Power . . . To establish an uniform Rule of Naturalization" and Section 1 of the Fourteenth Amendment to the Constitution of the United States provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person, of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

In *Osborn* v. *Bank of United States,* 9 Wheat. 738 (1824), the Supreme Court of the United States said at page 751:

> "[The naturalized citizen] becomes a member of the society, possessing all of the rights of an native citizen, and standing, in the view of the constitution, on the footing of a native."

In *Luria* v. *United States,* 231 U.S. 9 (1913), the Supreme Court of the United States said at page 22:

> "Under our Constitution, a naturalized citizen stands on an equal footing with a native citizen in all respects, save that of eligibility to the Presidency".

In *Knauer* v. *United States,* 328 U.S. 654 (1946), the Supreme Court of the United States said at page 658:

> "Citizenship obtained through naturalization is not a second-class citizenship. It . . . carries with it all the rights and prerogatives of citizenship obtained by birth in this country. . . ."

The above principles were repeated and followed in the cases of *Schneider* v. *Rusk,* 377 U.S. 163, 166 (1964) and *Afroyem* v. *Rusk,* 387 U. S. 253, 261 (1967).

The discrimination which is directed against the plaintiff physicians, by the statutory amendment herein involved, is clearly apparent from the fact that all other physicians in the State of Illinois, who supposedly were licensed to practice medicine "on the basis of merit and fitness" are not required, by the amendment, to submit to a medical re-examination, but this burden is imposed upon the plaintiffs only. Such discrimination clearly violates the "due process" guarantee of the Federal Constitution.

In *Williams* v. *Illinois,* 399 U.S. 235 (1970), this Court reversed the Illinois Supreme Court and, at page 242, quoted from the earlier case of *Griffin* v. *Illinois,* 351 U.S. 12, that "a law non-discriminatory on its face may be grossly discriminatory in its operation."

In the recent case of *American Motorists Ins. Co.* v. *Starnes,* 48 L.Ed. 2d 263 (decided May 19, 1976), this Court said at page 271:

"We are not confined to the language of the statute under challenge in determining whether that statute has any discriminatory effect . . . as a statute nondiscriminatory on its face may be grossly discriminatory in its operation, Williams v. Illinois, 399 U.S. 235, 242, 26 L.Ed. 2d 586, 90 S.Ct. 2018, . . . (1970); Griffin v. Illinois, 351 U.S. 12, 17 n. 11, 100 L.Ed. 891, 76 S.Ct. 585, 55 ALR2d 1055 (1956), . . ."

Respectfully submitted,

HARRY G. FINS
and
HAROLD A. HARRIS
Counsel for petitioners

APPENDIX

APPENDIX A

Illinois Appellate Court Opinion
(Filed December 27, 1974)

DR. ARTURO RIOS, *et al.*, Plaintiffs-Appellants,

v.

NOLAN B. JONES, *et al.*,
Defendants-Appellees, Cross-Appellants.
25 Ill. App. 3d 381, 323 N.E. 2d 38

MR. PRESIDING JUSTICE EGAN delivered the opinion of the court:

The plaintiffs are 62 physicians employed by the Department of Health of the State of Illinois. They are all foreign-born United States citizens who received degrees of Doctor of Medicine in foreign countries and were licensed to practice medicine in those countries.

In 1951, the Medical Practice Act was amended (Ill. Rev. Stat. 1951, ch. 91, par. 14a) to provide that the Department of Registration and Education might in its discretion issue without examination a limited license to practice medicine in all its branches to any applicant who could furnish the Department with satisfactory proof that he was 21 years of age or over, of good moral character, had had such training at schools which were reputable and in good standing as under the circumstances the Department should deem sufficient and had been appointed a physician in a hospital maintained by the State. The limited license would entitle a physician to practice medicine only in the hospital designated on his license and in any case under the supervision of one of the medical officers of the hospital who was regularly licensed under the Act and under the regulations established by the hospital.

In 1957, the section was amended to include the requirement that the applicant serve a 1-year internship at the hospital approved by the Department. It also provided that the holder of a State hospital permit (also referred to in the Act as a limited license) could practice medicine in all its branches in any hospital or facility maintained by the Department.

The section was again amended by Public Act 77-2757 which became effective on September 1, 1972, and provided, in part, that all State hospital permits in effect on the effective date of tthe amendment and issued before July 1, 1973, would expire on July 1, 1973. Each person holding a permit could apply for a renewal subject to certain requirements which included passing an examination. Whereas the previous section had in effect made the limited license permanent, the amendment provided that each renewal would be for 1 year, that the Department could not issue more than two renewals to each holder and that the Department had no authority to issue a State hospital permit for an indefinite period.

All of the plaintiffs * received State hospital permits or limited licenses before July 1, 1965. Each of them served a 1-year internship in an approved hospital; each was required to pass a physician's civil service examination; and each of them has received periodic promotions and increases in salary. They were informed by the defendants, the Directors of the Department of Personnel, Registration and Education and Mental Health that, unless they took and passed academic medical examinations pursuant to Public Act 77-2757, they would lose their employment and civil service status.

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* The word "All" is apparently the result of a typographical error and, to be absolutely correct, should read "Most", as some of the plaintiff physicians received their licenses after July 1, 1965.

The plaintiffs filed a complaint seeking to enjoin the defendants from enforcing the Act's requirement that they take an examination. The trial court entered an order enjoining the defendants from enforcing the Act only as to those plaintiffs having 10 years or more of civil service, holding the Act unconstitutional as to them, and denied injunctive relief as to the remainder. The plaintiffs who were denied relief have appealed and the defendants have cross-appealed from the order granting relief to those plaintiffs having 10 years or more of service.

Section 13a of the Medical Practice Act (Ill. Rev. Stat. 1973, ch. 91, par. 14a) provides, in part:

> "As a condition precedent to the renewal of any state hospital permit on July 1, 1974 or on any renewal date thereafter, the permit holder shall be required to show proof of having passed an examination given by the Department of Registration and Education or to have passed an examination deemed by the Department to have been at least equal in all substantial respects to the Department's examination. The Department shall have no authority to issue a renewal of a permit to an individual who has failed to pass this examination."

But the next sentence of the Act provides that "[a]n applicant for renewal of a state hospital permit must submit proof to the Department of Registration and Education that he is pursuing such course of instruction and study as will provide the applicant with the necessary qualifications to successfully pass an examination for the issuance of a license to practice medicine in all of its branches." The plaintiffs contend that it is unclear under these provisions whether a license will issue if the applicant passes an examination or if he merely submits proof

that he is pursuing a course of study that will provide him with the necessary qualifications to pass the examination. Consequently, the plaintiffs argue, the Act is void for vagueness.

In their brief the defendants said:

> "The plain and obvious meaning of the statute is that all persons who apply for the renewal of their hospital permits at any time between the effective date of the Act and July 1, 1974, must submit with their application a proof of study. A different condition precedent for renewal applies after July 1, 1974—namely, the applicants must show proof of successfully passing an examination given by the Department of Registration and Education or equal in all substantial respects to the Department's examination."

Such a construction reads into the Act language which, obviously, is not present. It is the function of the legislature, not the courts, to prescribe the necessary qualifications to practice medicine. It is the function of the courts to construe the Act of the legislature to give effect, subject to constitutional limits, to the intent of the legislature. In so doing, however, the courts cannot inject provisions not found in a statute, however desirable or beneficial they may be. *Droste* v. *Kerner,* 34 Ill.2d 495, 504, 217 N.E.2d 73.

In oral argument the Assistant Attorney General said that the examinations referred to in the amendment are those leading to a general license. Why then should the first examination referred to be qualified only by the requirement that it be prepared or approved by the Department, while the other examination following a certain course of study is qualified as one that would grant a "license to practice medicine in all of its branches"? It could be argued that the Act refers to two separate types of ex-

amination. Under the defendants' interpretation, the phrase "to practice medicine in all of its branches" means two different things in the same section of the Act.

Under the first paragraph of section 13a an applicant is required to show that he has already completed training at a school approved by the Department and that he has served a 1-year internship in a hospital. It is unreasonable to assume that the school referred to is anything but a medical school. That being so, the requirements for a limited license—graduation from a medical school and a 1-year internship—are the same as the requirements for a general license. If the defendants' interpretation is correct, what further course of study and instruction must an applicant for a limited license show that he *is* pursuing since he has graduated from a medical school and has completed a 1-year internship?

We believe that it is just as reasonable to construe the Act to mean that an applicant must pass one examination and also provide proof that he is pursuing a course of study that would enable him to pass another examination that in turn would entitle him to a general license. It is particularly significant that a limited license has a maximum life of 2 years under the amendment. Thus, after 2 years, what is the holder of a limited license who is a graduate of a medical school with a 1-year internship to do? The answer is obvious: He either gets a general license to practice medicine or he seeks some other line of endeavor. The next question is: How can he get a general license?

Section 5 of the Act (Ill. Rev. Stat. 1971, ch. 91, par. 5) sets out the minimum standards of professional education that must be met before an applicant may be examined for a general license to practice medicine. Section 5, subsection 1(b), provides that the applicant must be a graduate of a

medical college, which in turn must meet certain requirements, and he must have completed 12 months' clinical training in a hospital. Section 5, subsection 1(c), provides that if the applicant is a graduate of a medical school in another country he must have been a resident of this State for 5 years before matriculating in the foreign school, and after testing, he must have received internship training and a medical degree from an Illinois medical school. Since the plaintiffs were not residents of Illinois before attending medical school, they do not come within the purview of section 5, subsection 1(c).

As we have pointed out, section 5, subsection 1(b), refers to medical schools, and section 5, subsection 1(c), refers to foreign medical schools. We construe section 5, subsection 1(b), therefore, to mean medical schools in this country. Thus, the plaintiffs at present do not qualify for examination under section 5, subsection 1(b). The only other section under which a graduate of a foreign medical school may qualify for a general license is section 13 (Ill. Rev. Stat. 1973, ch. 91, par. 14), which provides that the Department may issue a license without examination to a person who has been licensed in another country. The requirements for a general license in the foreign country must be deemed by the Department to be the equivalent of the requirements for a general license in this State, and the foreign country in which he was licensed must accord the same privilege to persons licensed in this State. The burden of proof is on the applicant, and the decision is within the discretion of the Department. Consequently, if the Department exercised its discretion against them, the plaintiffs could qualify for a general license under the Act only by resuming their education at the medical school level in this country, assuming their acceptance by the school. Their acceptance is by no means assured.

In *Acorn Auto Driving School, Inc.* v. *Board of Education,* 27 Ill.2d 93, 98, 187 N.E.2d 722, the court said:

> "Statutes which are so incomplete, vague, indefinite and uncertain that men of ordinary intelligence must necessarily guess at their meaning and differ as to their application, have uniformly been declared unconstitutional as denying due process. [Citations.]"

And in *Baggett* v. *Bullitt,* 37 U.S. 360, 367, 12 L.Ed.2d 377, 382, 84 S.Ct. 1316, the United States Supreme Court said:

> "[A] law forbidding or requiring conduct in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates due process of law. [Citations.]"

Whether the construction given by the defendants truly represents the legislative intent is debatable but immaterial. The point to be made is that the Act is susceptible of more than one interpretation. And under the interpretation given by the defendants an applicant is still faced with the quandary of determining what further "course of instruction and study" a graduate of a medical school with a 1-year internship must pursue. We therefore judge that this section is so uncertain that men of ordinary intelligence must guess at its meaning and differ as to its application and that, therefore, it denies due process.

The plaintiffs also contend that they possessed, in both their licenses and employment, a "property right" which the amendment deprives them of without due process. The main thrust of the defendants' argument is that, although the plaintiffs' employment concededly represents a property right, the State may regulate property rights through its police power, which it will reasonably exercise through the examination required under the Act. There can be no quarrel with the defendants' position that the State may

require licensing of physicians under its obligation to safeguard the public health. And there can be no quarrel with the defendants' argument that an examination represents a reasonable exercise of the police power. But the defendants have cited no case factually apposite that would support a requirement that one who possesses a "property right" of employment may be required to submit to an examination in order to retain that "property right" of employment. On this point the defendants rely principally on *Dent* v. *West Virginia,* 129 U.S. 114, 32 L.Ed. 623, 9 S. Ct. 231. In that case the statute required every physician to obtain a certificate from the state board of health that he was a graduate of a reputable medical college; or that he had practiced medicine for 10 years in the state; or that he had passed an examination by the board. The defendant had been practicing medicine for 6 years. He had a diploma from a medical college which the board had rejected when he applied for a certificate. The Supreme Court upheld the statute, which, passed in 1882, was apparently the first statute in West Virginia that dealt with the licensing of physicians. Licensing laws must begin sometime. It is one thing to require a license initially; it is quite another to require one who already has a license to pass another examination to keep it. The *Dent* case would be authority here if the defendant had been a holder of a State license at the time of the passage of the Act. The defendants also cite certain language in *Reetz* v. *Michigan,* 188 U.S. 505, 510, 47 L.Ed. 563, 23 S.Ct. 390. That case involved a statute, passed in 1889, which required a diploma from a medical school or a satisfactory examination. But, most important, the statute also provided that an applicant should be given a certificate of registration if he could give sufficient proof to the board that he had already been registered as a physician under the previous statute. The

Board of Registration found that the defendant had failed to submit sufficient proof of a previous registration. The case hinged on the question of whether the Act constituted an unlawful delegation of judicial power to the board. If the defendants' argument is correct, then a statute requiring all doctors practicing under a general license to submit to another examination would be constitutionally permissible, and so would an Illinois Supreme Court rule requiring all lawyers to submit to another bar examination.

The trial court held that *Perry* v. *Sindermann,* 408 U.S. 593, 33 L.Ed.2d 570, 92 S.Ct. 2694, was dispositive of the issues before it. In that case the respondent was employed by a State college system for 10 years, the last 4 as a junior college professor under a series of 1-year written contracts. The regents declined to renew his employment without an explanation or a prior hearing. The teacher's complaint alleged that he had not been retained because of his public utterances and, in addition, that he had an implied contract of employment. The Supreme Court upheld a reversal of summary judgment for the regents, reasoning that if the teacher could prove the allegations of his complaint that he was not being retained because of his exercise of a constitutional right, he would be entitled to retention; and, if he could establish the existence of an implied contract, due process required that he be given a hearing before termination of employment.

We believe that the facts of this case are even stronger than *Perry* since that case involved an implied contract of employment, which the court recognized as a property right. It was conceded by all parties in *Perry* and in *Board of Regents* v. *Roth,* 408 U.S. 564, 33 L.Ed.2d 548, 92 S.Ct. 2701, decided the same day, that public employment under tenure provisions constituted a property right which could

not be impaired without due process of law. We agree with the trial court's conclusion that the *Perry* case was controlling here but disagree with its holding that it was applicable only to those doctors having 10 years' or more service. The fact that the teacher in the *Perry* case had 10 years' employment was accidental and had no bearing on the decision. The defendants seek to distinguish *Perry* from this case because, they say, *Perry* did not involve the police power. We are not prepared to accept the proposition that the State's control of the schools is necessarily apart from its general police power. But assuming that it is, the defendants' argument is a distinction without a difference.

All of the plaintiffs had passed examinations and had received promotions and increases in wages pursuant to the provisions of the Personnel Code. They are, therefore, entitled to the protection of the civil service laws. Section 8b of the Personnel Code (Ill. Rev. Stat. 1973, ch. 127, par. 63b108b) provides for "tenure on the basis of merit and fitness." Section 8b.16 provides for discharge only after a hearing and only for good cause. The identical issue before us was present in *People ex rel. Baird* v. *Stevenson,* 270 Ill. 569, 571, 110 N.E. 814, and the question was thus posed:

> " 'Can the State Civil Service Commission require a person already by law in the classified civil service of the State without prior examination, to take an examination which will test his or her competency, efficiency and qualifications to perform the duties of the office in which he or she is employed, and discharge such person for failure and refusal to take such an examination?' "

The court answered the question as follows (270 Ill. 569, 572):

> "There is nothing in the statute which authorizes the State Civil Service Commission to require a member of the classified State civil service to take an examination before the commission, whether the officer or employee became a member of such classified service through an entrance examination or by the express terms of the statute declaring that those who held offices or places of employment when the amended act took effect should become members of the classified State civil service without original examinations. All are secured in their positions by a prohibition against removal except upon written charges and a hearing with an opportunity to defend against the charges."

We judge that the *Stevenson* case is clearly applicable and controlling here.

The defendants also maintain that the legislature intended that the amendment be applied retroactively. It is the general rule that statutes will not be construed retroactively unless express language provides otherwise. (*Stigler* v. *City of Chicago,* 48 Ill.2d 20, 24, 268 N.E.2d 26.) And in any event, a statute may not be given retroactive application if its effect will be the impairment of a vested right. (*Hogan* v. *Bleeker,* 29 Ill.2d 181, 190, 193 N.E.2d 844.) Therefore, assuming the statute were sufficiently clear to satisfy constitutional requirements, it could not apply to the plaintiffs. Although the case was not expressly decided on constitutional grounds, we think it appropriate to cite *Schleifer* v. *Department of Registration and Education,* 326 Ill.App. 259, 61 N.E.2d 398 (abstract opinion). The petitioner graduated in 1938 from the University of Vienna Medical School, which was deemed reputable and in good standing by the Department of Registration and Education. In 1941, the Department passed a resolution

suspending recognition from all medical schools except those in the United States and Canada. The rule was made retroactive to 1936. In 1942, the petitioner completed his internship at a hospital in Chicago. The appellate court reversed an order denying his petition for a writ of mandamus and held:

> "Under the circumstances it would appear that in order to become licensed to practice medicine in this State, petitioner would have to repeat an entire medical course of four years in a school recognized by the Department because of the rules and regulations promulgated. It seems to us that, under the existing circumstances, this renders the rules unreasonable and arbitrary."

The same prospect that faced the petitioner in *Schleifer*—beginning all over in a medical school—confronts the plaintiffs here if the retroactive application of the amendment is upheld as a reasonable exercise of the police power.

The plaintiffs filed an amendment to the complaint which contended that they were entitled to a license by eminence under section 13 of the Medical Practice Act (Ill. Rev. Stat. 1973, ch. 91, par. 14). The trial court dismissed the amendment and that ruling is assigned as error by the plaintiffs. There is no showing that the plaintiffs ever applied for a license under section 13. They therefore failed to exhaust their administrative remedies and the trial court's ruling was correct. (See *Chicago Welfare Rights Organization* v. *Weaver,* 56 Ill.2d 33, 305 N.E.2d 140.) The Federal cases cited by the plaintiffs are not persuasive.

For the foregoing reasons we conclude that the statute may be applied only prospectively and not to the plaintiffs; that to apply it to the plaintiffs would constitute an unconstitutional abridgment of a vested right; and that the statute is unconstitutionally vague. In view of our holding, it is unnecessary to pass on the plaintiffs' motion to dismiss the defendants' cross-appeal or the other arguments of the plaintiffs.

That part of the judgment granting relief to all the plaintiffs having over 10 years' tenure is affirmed; that part of the judgment denying relief to the other plaintiffs is reversed.

Judgments affirmed in part and reversed in part.

BURKE and GOLDBERG, JJ., concur.

APPENDIX B

Judgment of Illinois Supreme Court
(Entered on May 28, 1976)

UNITED STATES OF AMERICA

State of Illinois)
) ss.
Supreme Court)

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the tenth day of May in the year of our Lord, one thousand nine hundred and seventy-six, within and for the State of Illinois.

Present: DANIEL P. WARD, *Chief Justice*

Justice Walter V. Schaefer
Justice Thomas E. Kluczynski
Justice Howard C. Ryan
Justice Robert C. Underwood
Justice Joseph H. Goldenhersh
Justice Caswell J. Crebs

WILLIAM J. SCOTT, *Attorney General*
LOUIE F. DEAN, *Marshal*
ATTEST: CLELL L. WOODS, *Clerk*

Be It Remembered, that, to-wit: on the 28th day of May 1976, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

Dr. Arturo Rios, et al.,

Appellees,

No. 47343 vs.

Nolan B. Jones, Director of the Department of Personnel of the State of Illinois; Dean Barringer, Ph.D., Director of the Department of Registration and Education of the State of Illinois; and Dr. LeRoy Levitt, Director of the Department of Mental Health of the State of Illinois,

Appellants.

Appeal from
Appellate Court, First District
59965
72 CH 6076

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises, are of the opinion that in the record and proceedings aforesaid, and in the rendition of the judgment aforesaid, there is manifest error.

Therefore, it is considered by the Court that for that error and others in the record and proceedings aforesaid the judgment of the Appellate Court of the First District in this behalf rendered, be reversed, annulled, set aside and wholly for nothing esteemed, and this cause be remanded to the Circuit Court of Cook County for further proceedings not inconsistent with the views expressed in the opinion attached to this mandate.

And it is further considered by the Court that the said appellants recover of and from the said appellees costs by them in this behalf expended, to be taxed, and that they have execution therefor.

APPENDIX C

Illinois Supreme Court Opinion
(Filed on May 28, 1976)

DR. ARTURO RIOS *et al.*, Appellees, v. NOLAN B. JONES, Director of the Department of Personnel, *et al.*, Appellants.

MR. JUSTICE CREBS delivered the opinion of the court:

We have granted the defendants leave to appeal from the decision of the appellate court holding that section 13a of the Medical Practice Act as amended by Public Act 77-2757 (Ill. Rev. Stat. 1973, ch. 91, par. 14a) is unconstitutional. *Rios* v. *Jones,* 25 Ill. App. 3d 381.

The several plaintiffs are all physicians who were born and educated in countries other than the United States and who have been employed by the Department of Mental Health of the State of Illinois. Each of the plaintiffs has been granted a State hospital permit pursuant to section 13a. That section first became law in 1951 and provided that the Department of Registration and Education had the authority to issue a limited license to practice medicine in all its branches to any applicant who was 21 years of age or over, of good moral character, had such training at schools which were reputable and in good standing as under the circumstances the Department deemed sufficient and had been appointed a physician in a hospital maintained by the State. (Ill. Rev. Stat. 1951, ch. 91, par. 14a.) The limited license enabled a physician to practice medicine only in the hospital designated on his license and only under the supervision of a medical officer of that hospital. The Act did not provide that the limited license would expire after a certain time period.

Section 13a was amended in 1957 to add the requirement that the applicant serve a one-year internship at a hospital approved by the Department before a limited license could be issued to him. The 1957 amendment also referred to the limited license as a State hospital permit. (Ill. Rev. Stat. 1957, ch. 91, par. 14a.) In addition, the amendment declared that the permit would entitle the physician to practice medicine in all of its branches in hospitals or facilities maintained by the Department of Public Welfare.

In 1961, the reference in the 1957 amendment to the Department of Public Welfare was expanded to include the Department of Public Health. In 1963 the reference to the Department of Public Welfare was replaced by reference to the Department of Mental Health.

Section 13a was significantly amended in 1965. (Ill. Rev. Stat. 1965, ch. 91, par. 14a.) That amendment provided, *inter alia,* that no State hospital permits could be issued which were for an indefinite period of time, that doctors who had previously been issued permits could apply for renewal of the permits, that each renewal was effective for a period of two years and that the doctors who had previously been issued permits could apply for renewals every two years. The amendment also stated that each person who was issued his first State hospital permit after July 1, 1966, would be entitled to receive no more than three renewals of the permit. Any applicant receiving his first permit after July 1, 1966, was required to submit proof to the Department as a condition precedent to issuance of the original permit and each subsequent renewal, that he was pursuing a course of instruction and study that would enable him to pass an examination for the issuance of a license to practice medicine in all its branches.

Section 13a was again amended in 1972 by Public Act 77-2757. That amendment states in relevant part that:

> "As a condition precedent to the renewal of any state hospital permit on July 1, 1974 or on any renewal date thereafter, the permit holder shall be required to show proof of having passed an examination given by the Department of Registration and Education or to have passed an examination deemed by the Department to have been at least equal in all substantial respects to the Department's examination. The Department shall have no authority to issue a renewal of a permit to an individual who has failed to pass this examination. An applicant for renewal of a state hospital permit must submit proof to the Department of Registration and Education that he is pursuing such course of instruction and study as will provide the applicant with the necessary qualifications to successfully pass an examination for the issuance of a license to practice medicine in all of its branches." (Laws of 1972, at 2022.)

After the passage of Public Act 77-2757, the plaintiffs were informed that they would lose their employment unless they passed a medical examination.

The plaintiffs filed a complaint in the circuit court of Cook County alleging that Public Act 77-2757 was unconstitutional and requesting that the defendants be enjoined from enforcing it. The circuit court held that the Act was unconstitutional as to those plaintiffs having ten years or more of civil service and enjoined the defendants from enforcing the Act as to those plaintiffs. The court denied injunctive relief to the other plaintiffs.

The plaintiffs who were denied relief appealed to the appellate court, and the defendants cross-appealed from the order granting injunctive relief to the plaintiffs having ten years or more of service. The appellate court, holding

that Public Act 77-2757 was unconstitutional, affirmed the order granting the injunction to the plaintiffs with ten or more years service and reversed the order denying relief to the other plaintiffs.

One ground upon which the appellate court found Public Act 77-2757 to be unconstitutional is that the Act was unconstitutionally vague. It was held that a reading of the Act failed to make clear whether one or two examinations were contemplated. One possible interpretation of the Act is that an applicant for a State hospital permit had to pass one examination to get the permit and had to show that he was pursuing a course of study as preparation for another examination that in turn would entitle him to a general license. Another possible interpretation of the Act is that an applicant who sought renewal of his permit after July 1, 1974, must pass an examination while an applicant who sought renewal prior to July 1, 1974, must submit proof that he was studying to pass the examination. Under this second interpretation of the Act, only one type of examination is contemplated. The appellate court held that this ambiguity in Public Act 77-2757 created a second ambiguity. Since it was not clear whether one or two examinations were contemplated by the Act, it could not be determined what type of "course of instruction and study" was required. The appellate court found that Public Act 77-2757 was so uncertain that men of ordinary intelligence must guess at its meaning and differ as to its application.

We find that the appellate court erred in its determination that the issue before it was the constitutionality of Public Act 77-2757. After the parties had submitted briefs and argued orally before the appellate court but before the opinion of the appellate court was rendered, section 13a of the Medical Practice Act was amended by Public Act 78-1103 (Laws of 1974, at 692; Ill. Rev. Stat. 1975, ch.

91, par. 14a). The amendment became effective on August 4, 1974, while the appellate court did not render its decision until December 27, 1974. In the circumstances of this case the rule applies that where the legislature has changed the law pending an appeal the case must be disposed of by the reviewing court under the law as it then exists, and not as it was when the decision was made by the trial court. (*Illinois Chiropractic Society* v. *Giello,* 18 Ill.2d 306.) A different situation might exist if Public Act 77-2757 had been put into effect so that the plaintiffs would have been required to take an examination. The appellate court, however, granted a motion to stay the medical examination that had been scheduled for the plaintiffs. The record before this court indicates that none of the plaintiffs were required to take an examination pursuant to the requirements of Public Act 77-2757. After August 4, 1974, the plaintiffs were not threatened by the application of that act but by the application of Public Act 78-1103. Under those circumstances, the issue before the appellate court was the constitutionality of section 13a of the Medical Practice Act as it stood on the date of the court's opinion.

Section 13a of the Medical Practice Act as amended by Public Act 78-1103 is sufficiently clear so that the ambiguity that may have existed after the passage of Public Act 77-2757 no longer exists. The Act provides that all State hospital permits were to expire on July 1, 1975, and that holders of permits were entitled to apply for one renewal which was to expire on the first day of July following the date of the renewal. As a condition precedent to the issuance or renewal of a State hospital permit, the applicant or permit holder was required to pass an examination within three months prior to the application for permit or renewal. A second condition precedent is that the applicant submit proof that he is pursuing a

course of instruction and study that will provide him with the necessary qualifications to successfully pass an examination for the issuance of a license to practice medicine in all of its branches. The Act states further that the legislative intent of the amendatory act of 1974 is to extend to the Department of Mental Health and the Department of Registration and Education a period of time in which to devise a plan either to replace the State hospital permit system or to prepare all permit holders to qualify for licenses to practice medicine in all its branches. Section 13a as it now stands clearly contemplates two types of examination. The first examination mentioned in the Act must be taken for an applicant to receive a State hospital permit or a renewal subsequent to July 1, 1975. The second examination referred to in the Act is that which is required to obtain a license to practice medicine in all its branches. The "course of instruction and study" mentioned in the Act obviously refers to the second examination. We therefore hold that the appellate court erred in finding that section 13a of the Medical Practice Act is unconstitutionally vague.

The appellate court also held that the examination requirements of Public Act 77-2757 violated the due process clauses of the Illinois and United States constitutions. It was determined that the doctors who had received State hospital permits had a vested property right in their employment and that the enforcement of Public Act 77-2757 would constitute a taking of that right without due process. The defendants argued that imposition of the examination requirements is a reasonable exercise of the State's police power and is intended as a measure to protect the public. Since section 13a of the Medical Practice Act as amended by Public Act 78-1103 still provides that an examination must be taken before a State hospital permit

will be renewed, the issue before this court is, in this respect, the same as the issue considered by the appellate court.

The appellate court was correct in finding that the doctors who held State hospital permits had property rights which were protected by due process. In *Burden* v. *Hoover,* 9 Ill.2d 114, 118, we stated that "one who holds a license to practice medicine, be it a limited or a full license, has a 'property right' in the sense that laws affecting him in his practice must satisfy due process of law."

The fact that the plaintiffs possess property rights and are entitled to due process protection, however, does not mean that those rights cannot be affected by State Legislation. As the United States Supreme Court declared in *Goldfarb* v. *Virginia State Bar,* 421 U.S. 773, 792, 44 L. Ed. 2d 572, 588, 95 S. Ct. 2004, 2016: "[T]he States have a compelling interest in the practice of professions within their boundaries, and * * * as part of their power to protect the public health, safety, and other valid interests they have broad power to establish standards for licensing practitioners and regulating the practice of professions." The demands of due process are proportional to the weight of the interest being protected in balancing that interest against the countervailing interests of society. (*Powell* v. *Jones,* 56 Ill.2d 70, 78.) If, after balancing their interests, the State's exercise of its police power is deemed to be reasonable, the legislation in question must be upheld.

In our judgment the weight to be afforded the plaintiffs' interests in continued employment is not so great as to render the statute in question unconstitutional. The State's inherent police power gives it the right to enact reasonable legislation to secure the public health, morals, safety or welfare. That power obviously includes the right

to establish licensing procedures for the medical profession. The State's interest in promoting the general welfare by licensing physicians is of great importance. We believe that it is reasonable to impose strict licensing requirements upon physicians who received their medical training in foreign countries. The medical education received by the plaintiffs may be inferior to, superior to or comparable to medical education available in the United States. The fact is, however, that our General Assembly cannot be expected to be a judge of the quality of foreign medical training facilities. We do not find it unreasonable that the legislature chose to terminate the State hospital permit system through which doctors educated in other countries are permitted to engage in the limited practice of medicine in Illinois even though the quality of their education is not known. We note that holders of State hospital permits did not face immediate termination of employment. Public Acts 77-2757 and 78-1103 each provided that the doctors could retain their State hospital permits for a period of time while they prepared to take an examination for the issuance of licenses to practice medicine in all its branches. Accordingly, we hold that section 13a of the Medical Practice Act is not violative of due process as it now stands.

The plaintiffs also claim that the examination requirements of section 13a violate the equal protection clause of the fourteenth amendment to the United States Constitution as well as the privileges and immunities provision in section 2 of article IV of the Federal Constitution. They contend that since they are naturalized citizens the requirement that they take an examination is violative of the privileges and immunities clause, because doctors who were born and educated in the United States are not required to take the examination. Similarly, the plaintiffs assert that placing them in a different class than the doc-

tors who were born and educated in this country constitutes a violation of equal protection. These arguments are without merit. The privileges and immunities clause is intended to prevent unreasonable discrimination by a State against citizens of other States. Since nothing in the record suggests that the plaintiffs are citizens of a State other than Illinois, the privileges and immunities clause is not applicable to this case. Moreover, the equal protection clause of the fourteenth amendment does not prevent the enactment of laws for the protection of the public health, safety, welfare or morals. This provision invalidates only those enactments that are arbitrary, unreasonable and unrelated to the public purpose sought to be attained and does not proscribe legislative classifications that are reasonably calculated to promote or serve the public health, safety, welfare or morals. (*City of Chicago* v. *Vokes,* 28 Ill.2d 475.) As previously stated, we find that the recent amendments to section 13a constitute a reasonable exercise of the State police power. Distinguishing between doctors who were educated in this country and those who were educated in foreign countries and establishing licensing procedures based on that distinction is not necessarily arbitrary, unreasonable or unrelated to the public purpose sought to be attained.

For the foregoing reasons, we uphold the constitutionality of section 13a of the Medical Practice Act. The judgment of the appellate court is reversed.

The cause is remanded to the circuit court of Cook County for further proceedings not inconsistent with this opinion.

Reversed and remanded, with directions.

APPENDIX D

Order of Illinois Supreme Court Denying Rehearing (Entered on June 28, 1976)

UNITED STATES OF AMERICA

State of Illinois)
) ss.
Supreme Court)

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the tenth day of May in the year of our Lord, one thousand nine hundred and seventy-six, within and for the State of Illinois.

Present: Daniel P. Ward, Chief Justice
Justice Walter V. Schaefer
Justice Thomas E. Kluczynski
Justice Howard C. Ryan
Justice Robert C. Underwood
Justice Joseph H. Goldenhersh
Justice Caswell J. Crebs

William J. Scott, Attorney General
Louie F. Dean, Marshal
Attest: Clell L. Woods, Clerk

Be It Remembered, that, to-wit: on the 28th day of June, A.D. 1976, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

Dr. Arturo Rios, et al.,

Appellees

No. 47343 vs.

Nolan B. Jones, Director of the Department of Personnel of the State of Illinois; Dean Barringer, Ph.D., Director of the Department of Registration and Education of the State of Illinois; and Dr. LeRoy Levitt, Director of the Department of Mental Health of the State of Illinois,

Appellants

Appeal from Appellate Court, First District
59965
72 CH 6076

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.

APPENDIX E

Notice of Appeal to United States Supreme Court (Filed on July 2, 1976)

IN THE SUPREME COURT OF ILLINOIS

Dr. Arturo Rios, Dr. Enrique Vicioso, Dr. George Wroblewski, Dr. Valdimir L. Kozlowski, Dr. Dusan Popovich, Dr. Angela C. Hurtato, Dr. Jose M. Calimano, Dr. Lazaro Sanchez, Dr. Eugenia Bonk, Dr. Marie Nahorny, Dr. Manije Kadjar, Dr. Alla Schroepel, Dr. Nicola A. Aragona, Dr. Gregory A. Santoyo, Dr. Leopold Humar, Dr. Janis Biksa, Dr. Archibald Raud, Dr. Lem Davis Callahan, Dr. Suzanne Puttkammer, Dr. Tadeusz Wieclawek, Dr. Mansura Imanovic, Dr. Anna Kostic, Dr. Gaston Rodriguez, Dr. Stefan Stojanoff, Dr. Vera Cuk-Mularz, Dr. Eugene S. Lazowski, Dr. Desanka Jovanovich, Dr. Nevena Argiroff, Dr. Emilia-Gasiunas, Dr. Guna Veilands, Dr. Ida Taubel-Zivanovich, Dr. Ingeborg Georgis, Dr. Elsa Aguliera, Dr. Calixto Tovar, Dr. Ahmet Kin, Dr. Julius A. St. Amand, Dr. Juan M. Vereau, Dr. Joan Celewycz, Dr. Rosita Madarang, Dr. Romualdo de Varona, Dr. Miguel Esperne, Dr. Andres Bardelas, Dr. Armando Valasquez, Dr. Luciano Susini, Dr. Danielo A. Cano, Dr. Mariano Santiago, Dr. Jose Castellanos, Dr. Saternia Ventenilla, Dr. Maria Victoria Orfei, Dr. Romulo Jardenil, Dr. Witold Siwadlowski, Dr. Armando Olivares, Dr. Benjamin Villa, Dr. Lekic Nebojska, Dr. Bogna Maria Graver-Bugajski,

Dr. Angelo Restivo, Dr. Ezperanza Figuares, Dr. Raymundo R. Corpuz, Dr. Jose Pio Camejo, Dr. Evelyn Estrada, Dr. John Ondejicka, Dr. Iras Behroozi,

Appellants,

No. 47343 v.

Nolan B. Jones, Director of the Department of Personnel of the State of Illinois; Dean Barringer, Ph.D., Director of the Department of Registration and Education of the State of Illinois; and Dr. Leroy Levitt, Director of the Department of Mental Health of the State of Illinois,

Appellees.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Dr. Arturo Rios, Dr. Enrique Vicioso, Dr. George K. Wroblewski, Dr. Vladimir L. Kozlowski, Dr. Dusan Popovich, Dr. Angela C. Hurtato, Dr. Jose M. Calimano, Dr. Lazaro Sanchez, Dr. Eugenia Bonk, Dr. Marie Nahorny, Dr. Manije Kadjar, Dr. Alla Schroeppel, Dr. Nicola A. Aragona, Dr. Gregory A. Santoyo, Dr. Leopold Humar, Dr. Janis Biksa, Dr. Archibald Raud, Dr. Lem Davis Callahan, Dr. Suzanne Puttkammer, Dr. Tadeusz Wieclawek, Dr. Mansura Imanovic, Dr. Anna Kostic, Dr. Gaston Rodriguez, Dr. Stefan Stojanoff, Dr. Vera Cuk-Mularz, Dr. Eugene S. Lazowski, Dr. Desanka Jovanovich, Dr. Nevena Argiroff, Dr. Emilia-Gasiunas, Dr. Guna Veilands, Dr. Ida Taubel-Zivanovich, Dr. Ingeborg Georgis, Dr. Elsa Aguliera, Dr. Calixto Tovar, Dr. Ahmet Kin, Dr. Julius A. St. Amand, Dr. Juan M. Vereau, Dr. Joan Celewycz, Dr. Rosita Madarang, Dr. Romualdo de Varona, Dr. Miguel Esperne, Dr. Andres Bardelas, Dr. Armando Valazquez, Dr. Luciano Susini, Dr. Danielo A. Cano, Dr. Mariano Santiago, Dr. Jose Castellanos, Dr. Saternia Ventenilla, Dr. Maria Victoria Orfei, Dr. Romulo Jardenil, Dr. Witold Siwadlowski, Dr. Armando Olivares,

Dr. Benjamin Villa, Dr. Lekic Nebojska, Dr. Bogna Maria Graver-Bugajski, Dr. Angelo Restivo, Dr. Esperanza Figuares, Dr. Reymundo R. Corpuz, Dr. Jose Pio Camejo, Dr. Evelyn Estrada, Dr. John Ondrejicka, Dr. Iras Behroozi, the appellants above-named, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Illinois, reversing the judgment of the Appellate Court of the State of Illinois and remanding the cause to the Circuit Court of Cook County, Illinois, for further proceedings not inconsistent with the opinion of the Supreme Court of the State of Illinois, which judgment was entered by the Supreme Court of the State of Illinois in this action on May 28, 1976, and Petition for Rehearing was denied by the Supreme Court of the State of Illinois on June 28, 1976.

This appeal is taken pursuant to Title 28 of the United States Code, §1257(2).

/s/ Harry G. Fins
Harry G. Fins
33 N. Dearborn St., Suite 2330
Chicago, Illinois 60602
and
/s/ Harold A. Harris
Harold A. Harris
11 S. La Salle St., Room 2312
Chicago, Illinois 60603
Counsel for all Appellants

PROOF OF SERVICE

This is to acknowledge receipt of a copy of the above Notice of Appeal to the Supreme Court of the United States, this 30th day of June, 1976.

/s/ William J. Scott by Maureen Walsh
William J. Scott,
Attorney General of the State of
Illinois, Counsel for all Appellees

APPENDIX F

Order of Illinois Supreme Court Staying Mandate

No. 47343

In The
SUPREME COURT OF THE STATE OF ILLINOIS

DR. ARTURO RIOS, et al.,

Plaintiffs-Appellees,

v.

NOLAN B. JONES, et al.,

Defendants-Appellants.

ORDER

This Matter Coming On To Be Heard on Motion of the attorneys for the Plaintiffs-Appellees to Stay Mandate Pending Disposition of Appeal by the United States Supreme Court, a Notice of Appeal to the Supreme Court of the United States having been filed with the Clerk of the Supreme Court of Illinois in the above-entitled case, due notice having been given, and the Court being fully advised in the premises:

It Is Hereby Ordered that the mandate of this Court is hereby stayed pending disposition of the appeal by the United States Supreme Court.

Enter:

/s/ *Daniel P. Ward*
Justice of the Supreme Court
of Illinois

Dated this 6th day
of July, 1976.

Approved:
/s/ *Paul J. Bargiel*
Asst. Atty. Gen'l.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-103

DR. ARTURO RIOS, et al.,

Appellants,

vs.

NOLAN B. JONES, et al.,

Appellees.

Appeal from the Supreme Court of Illinois

MOTION TO DISMISS, OR IN THE ALTERNATIVE TO AFFIRM

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Printed by Authority of the State of Illinois

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In The

Supreme Court of the United States

October Term, 1976

No. 76-103

DR. ARTURO RIOS, et al.,

Appellants,

vs.

NOLAN B. JONES, et al.,

Appellees.

Appeal from the Supreme Court of Illinois

MOTION TO DISMISS, OR IN THE ALTERNATIVE TO AFFIRM

The appellees, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, respectfully move this Honorable Court to dismiss the appeal herein or in the alternative, to affirm the judgment of the Supreme Court of the State of Illinois, on the grounds that the appeal fails to present a substantial question for adjudication and that the question presented is so insubstantial as not to warrant further argument.

OPINION BELOW

The opinion of the Illinois Appellate Court is reported at 25 Ill.App.3d 381 and in 323 N.E.2d 380 and appears in appendix A of appellants' jurisdictional statement.

The opinion of the Illinois Supreme Court is reported at 348 N.E.2d 825 and appears in appendix C of appellants' jurisdictional statement.

JURISDICTION

Jurisdiction to hear this appeal is predicated on 28 U.S.C., §1257(2).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. art. 4, §2.

U.S. Const. amend. XIV.

Ill. Rev. Stat. 1957, ch. 91, par. 14a.

ARGUMENT

I.

ANY FEDERAL QUESTIONS RAISED IN THIS CASE HAVE BEEN EXPLICITLY DECIDED BY THE UNITED STATES SUPREME COURT ADVERSELY TO APPELLANTS, THEREFORE, NO SUBSTANTIAL FEDERAL QUESTION REMAINS.

The arguments raised by the appellants in this appeal fail to present a substantial federal question to this Honorable Court. Implicit in appellants' argument is the contention that civil service employment acts as a bar to the legitimate exercise of the police power in the regulation of the practice of medicine. Such a contention is totally unreasonable in light of the time honored precedents enunciated by this Court in *Dent* v. *West Virginia*, 129 U.S. 114, 32 L.Ed. 623 (1889), and its progeny.

A.

Plaintiffs' License to Practice Medicine Is Subject to Regulation by the State's Police Powers.

Although each individual is guaranteed the right to pursue the calling of his choice there is no impairment of this right when its exercise is regulated by conditions imposed by the state for the protection of society. In *Dent* v. *West Virginia*, 129 U.S. 114, 32 L.Ed. 623 (1889) this Court said:

> The power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulations as in its judgment will secure or tend to secure them against the consequences of ignorance and

incapacity as well as of deception and fraud. As one means to this end it has been the practice of different States, from time immemorial, to exact in many pursuits a certain degree of skill and learning upon which the community may confidently rely, their possession being generally ascertained upon an examination of parties by competent persons, or inferred from a certificate to them in the form of a diploma or license from an institution established for instruction on the subjects, scientific and otherwise, with which such pursuits have to deal. The nature and extent of the qualifications required must depend primarily upon the judgment of the State as to their necessity. If they are appropriate to the calling or profession, and attainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty. It is only when they have no relation to such calling or profession, or are unattainable by such reasonable study and application, that they can operate to deprive one of his right to pursue a lawful vocation. 32 L.Ed. at 626.

As long as the regulations imposed by the state have a real and substantial relation to the object sought to be obtained by the state, the action is lawfully within the parameters of the police power. Obviously, there is nothing more rationally connected to the licensure of physicians than an examination of their fitness and capacity to practice medicine. Thus, in *Dent* v. *West Virginia,* this Court upheld a state statute requiring every medical practitioner to obtain a certificate from the state board of health that he was a graduate of a reputable medical college, or had practiced medicine for at least 10 years, or had been found qualified to practice on examination of the board. This Court found these requirements rationally related to the practice of medicine and attainable "by reasonable study or application." 32 L.Ed. at 626.

In *Douglas* v. *Noble,* 261 U.S. 165, 67 L.Ed. 590 (1923), it was found that the determination of the subjects about which one must have knowledge in order to be fit to practice dentistry; the extent of knowledge required in each subject; the necessary degree of skill and the procedures instituted to conduct an examination of such skills were all proper subjects of police power regulations and, therefore, the administration of these standards could lawfully be delegated to an administrative body.

A statute prohibiting the practice of dentistry without a diploma from a dental college of good standing was upheld in *Graves* v. *Minnesota,* 272 U.S. 425, 71 L.Ed. 331 (1926). The state's regulatory statute was valid because "[c]learly the fact that an applicant for a license holds a diploma from a reputable dental college has a direct and substantial relation to his qualification to practice dentistry." 71 L.Ed. at 335.

The appellants herein have offered no arguments to dispute the reasonable relationship between their fitness and capacity as practitioners and the examination required by section 13a of the Illinois Medical Practice Act. Neither have they shown a substantial reason to deviate from the precedents recited above. Since no procedures exist for a complete evaluation and accreditation of foreign medical schools, graduates of these schools must be evaluated thoroughly in terms of their individual capacity to practice medicine. This can be accomplished by an exacting licensure examination. The enactment of section 13a requiring graduates of foreign medical schools who hold hospital permits to practice in Illinois State Hospitals to submit to a licensure examination, is clearly a reasonable exercise of the State's police power.

B.

Plaintiffs' Property Interest in Continued Civil Service Employment Is Subject to Reasonable Exercise of the State's Police Power.

The argument put forth by the appellants that civil service status is a property right which cannot be subjected to police power regulation is totally without merit. Although a tenured civil service position has been denominated a liberty and property right (*Board of Regents* v. *Roth,* 408 U.S. 564, 33 L.Ed.2d 548 (1972)) neither the due process clause nor the equal protection clause render this status inviolable; they merely protect the status from arbitrary and unreasonable interference by the state. As stated in *Nebbia* v. *New York,* 291 U.S. 502, 78 L.Ed. 940 (1934):

> Under our form of government the use of property and the making of contracts are normally matters of private and not of public concern. The general rule is that both shall be free of governmental interference. But neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it in the common interest. 78 L.Ed. at 948-49.

It is established law that all contracts and property rights are subject to the fair exercise of the state's police power. Although the exercise of this power may pose a heavier burden on some individuals than others, as long as the manner of regulation chosen is not arbitrary the constitutional rights of the affected individuals are not violated. As stated by this court in *Barbier* v. *Connolly,* 113 U.S. 27, 28 L.Ed. 923 (1885):

> But neither the Amendment, broad and comprehensive as it is, nor any other amendment was designed to interfere with the power of the State, sometimes termed its "police power," to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources and add to its wealth and prosperity. From the very necessities of society, legislation of a special character, having these objects in view, must often be had in certain districts, such as for draining marshes and irrigating arid plains. Special burdens are often necessary for general benefits, for supplying water, preventing fires, lighting districts, cleaning streets, opening parks, and many other objects. Regulations for these purposes may press with more or less weight upon one than upon another, but they are designed, not to impose unequal or unnecessary restrictions upon anyone, but to promote, with as little individual inconvenience as possible, the general good. 28 L.Ed. at 925.

Thus, even though both the right to practice medicine and the maintenance of civil service status are property rights which are constitutionally protected these rights are both subject to limitation by a reasonable exercise of the state's police power. The fact that one individual may hold both entitlements does not change the state's power to regulate either.

As illustrated by *Dent* v. *West Virginia,* and numerous other cases the regulation of the practice of medicine is clearly a proper exercise of the police power. This appeal fails to raise any question which does not fall within the law previously enunciated by this Court. The appellants do not claim that section 13a has no relationship to the legitimate exercise of the police power, nor do they claim that the subject matter of the examination is unreasonable

or unfair. They fail to present any question other than the power of the state to subject licensed practitioners to an examination of their skills and this question has long been answered adversely to them by this Honorable Court.

II.

PLAINTIFFS ARE ACCORDED DUE PROCESS WHERE CONTINUED CIVIL SERVICE STATUS IS CONDITIONAL UPON PASSAGE OF AN EXAMINATION RATIONALLY CONNECTED TO THEIR FITNESS AND CAPACITY AS PRACTITIONERS.

The appellants challenge the validity of section 13a of the Illinois Medical Practice Act which conditions the renewal of a permit to practice medicine in state hospital facilities upon the passage of a medical exam. The gist of the argument is that the additional examination requirement denies due process to those physicians practicing under a hospital permit prior to the passage of the examination provisio

The power of a state to make reasonable provisions for determining the qualifications of those engaging in the practice of medicine, and punishing those who attempt to engage therein in defiance of such statutory provisions, is not open to question. *Reetz* v. *Michigan,* 188 U.S. 505, 47 L.Ed. 563 (1903). *See also In re Campbell,* 197 Pa. 582, 47 A. 860 (1901); *Parks* v. *State,* 159 Ind. 217, 64 N.E. 862 (1902); *State* v. *Currens,* 111 Wis. 433, 87 N.W. 561 (1901); *Laughney* v. *Maybury,* 145 Wash. 146, 259 P. 17 (1927); *People* v. *Hasbrouck,* 11 Utah 306, 39 P. 918 (1895); *State* v. *Carey,* 4 Wash. 424, 30 P. 729 (1892); *Craig* v. *Board of Medical Examiners,* 12 Mont. 208, 29 S.W. 532 (1892); *Driscoll* v. *Com.,* 93 Ky. 393, 20 S.W. 431 (1892); *People*

v. *Apfelbaum,* 251 Ill. 18 (1911). As long as the regulatory means chosen by the state have a real and substantial relation to the public health, comfort, safety or welfare those means must be upheld by the courts. *Atlantic Coast Line R. Co.* v. *Goldsboro,* 232 U.S. 548, 58 L.Ed. 721 (1914).

In order to test the constitutional validity of a statute that regulates the licensing of professionals, this Court has repeatedly employed the "rational relationship" test. *Dent* v. *West Virginia,* 129 U.S. 114, 32 L.Ed. 623 (1889); *Douglas* v. *Noble,* 261 U.S. 165, 67 L.Ed. 590 (1923); *Schware* v. *Board of Bar Examiners,* 353 U.S. 232, 1 L.Ed.2d 796 (1957); *Konigsberg* v. *State Bar of California,* 353 U.S. 252, 1 L. Ed.2d 810 (1957). As long as the statute in question has a rational connection to the professionals' fitness or capacity as practitioners the due process guarantees of the fourteenth amendment are satisfied.

Here, section 13a requires physicians practicing under hospital permits to take an examination demonstrating medical competence. The examination requirement is an attempt to provide patients in state hospital facilities with proper medical care by insuring the competence of the physicians practicing therein. The appellees respectfully submit that the requirement that holders of hospital permits pass a preliminary exam as a condition precedent to renewal of their permits is reasonable for several reasons.

First, the appellants were originally licensed and are now licensed under much lower requirements than are demanded of any other physician in the State of Illinois. Secondly, section 13a makes renewal of that permit contingent upon the passage of an examination, but it does not automatically terminate appellants' right to practice medicine nor deprive them of a livelihood. Since no challenges have

been directed against the format or content of the examination itself, it must be assumed that passage of the examination could be had with a reasonable amount of study or preparation.

Lastly, the fact that all appellants are graduates of foreign medical schools is an important consideration in the evaluation of section 13a. Although one of the conditions precedent to the initial issuance of the hospital permits now held by the appellants was a determination that applicant was a graduate of a medical school which was "reputable and in good standing," this initial approval was for purposes of issuing a limited permit only. It does not amount to an official accreditation of these foreign medical schools for, in fact, no uniform procedure for evaluating and accrediting foreign medical schools exists. Forgotson, *Licensure of Physicians, Wash. U.L.Q.* 249 (1967). Each graduate of a foreign medical school must be evaluated individually and thoroughly in terms of his individual competence to practice medicine. It is incumbent upon the state to provide a method for examining the applicant's level of competence and to set the standards of competence which will be required in order to obtain a license to practice within the state.

As recognized by this Court in *Dent* v. *West Virginia*:

> It is only when they [requirements] have no relation to such calling or profession, or are unattainable by such reasonable study and application, that they can operate to deprive one of his right to pursue a lawful vocation. 32 L.Ed. at 626.

Thus, in *Dent* this court found that the requirement of graduation from a reputable medical college or passage of an examination by the Board complied with due process stand-

ards. Statutes that condition licensure on graduation from a reputable school (*Hackin* v. *Lockwood,* 361 F.2d 499 (9th Cir. 1966)); payment of fees (*Ayers* v. *Hadaway,* 303 Mich. 589, 6 N.W.2d 905 (1942)); and proof of good character (*Chaney* v. *State Bar of California,* 386 F.2d 962 (9th Cir. 1967)) have been upheld in the face of due process challenges.

Section 13a meets the rational relationship test of the due process clause in that it seeks to insure that foreign trained physicians are competent to perform medical services at a time of rapid advancement in all fields of medicine. It gives these physicians the opportunity to renew their hospital permits upon passage of an examination designed to test their skill and competence. The examination can successfully be completed by a reasonable amount of study or preparation. Section 13a in no way inhibits a foreign trained physician from pursuing a course of study or examination which would allow him to obtain full licensure to practice in the State of Illinois.

III.

THE MEDICAL PRACTICE ACT IS NOT DISCRIMINATORY.

A.

The Statute Applies Uniformly to Both Naturalized Citizens and Other Citizens of Illinois.

The fact that the appellants herein all received their medical training at foreign medical schools in no way indicates that section 13a discriminate against naturalized citizens. The appellants' contention that section 13a imposes arbitrary standards on foreign trained physicians ignores the fact that foreign trained physicians need not

necessarily be naturalized American citizens. The additional examination requirement is mandated by the nature of the educational training received by the licensee, not by the nature of the licensee's national origin.

Although the appellants contend that section 13a is in violation of the privileges and immunities clause, this clause is clearly inapplicable to the situation before this Court. The purpose of section 2 of Article 4, cited by appellants as the basis for the alleged privileges and immunities violation, is to prevent a state from discriminating against citizens of other states in favor of their own citizens. *Hague* v. *CIO,* 307 U.S. 496, 83 L.Ed. 1423 (1939). In the instant case all parties are citizens of the State of Illinois. Section 13a does not involve classifications based on citizenship and, therefore, cannot even remotely involve Art. 4, §2.

Any citizen of Illinois, trained to practice medicine in a foreign country, would be required under section 13a to pass a preliminary examination prior to receiving a permit to practice in Illinois state hospitals. That American-born citizens would seek medical training outside the United States is not an unlikely proposition in light of today's enormous competition for entrance into American medical schools. Regardless of the applicant's origin, section 13a applies uniformly. As has been mentioned before, no reliable method for evaluating and accrediting foreign medical schools exists. The method of licensing in other countries is not substantially equivalent to the requirements for a full license to practice in Illinois, however, one way the state can insure that only competent physicians hold permits to practice is by submitting the applicants to an examination of their skills. All foreign physicians are encour-

aged by the Department of Registration and Education to take the exam for a full license at the earliest opportunity. In the past, applicants for renewal of hospital permits were required to state the manner in which they were pursuing a course of study leading to successfully passing the exam for a full license. P. A. 77-2757, and its legislative antecedents, also specifically provide "a state hospital permit may be revoked by the Department at any time after the holder thereof becomes qualified for a regular license to practice medicine according to the terms of this Act." There is no discrimination against naturalized citizens because the Medical Practice Act applies in an impartial, uniform manner.

B.

Licensing Standards Based on Education and Training Are Consistent with the Fourteenth Amendment.

Section 13a does not deny the appellants equal protection of the law. The equal protection clause of the fourteenth amendment does not prevent the enactment of laws designed to guarantee the public health, safety, welfare and morals. A state may prescribe regulations founded on nature, reason and experience and may, to that end, create legislative classifications that are reasonably calculated to promote the public welfare. Regulating the licensing of qualified persons to professions demanding special skill is a valid public purpose.

In examining the validity of a licensing statute for purposes of an equal protection challenge this Court has consistently applied the "rational basis" test. *Schware* v. *Board of Bar Examiners,* 353 U.S. 232, 1 L.Ed.2d 796 (1957). If the classification in question is not arbitrary or unreason-

able and is based on distinctions rationally related to the purpose which the statute is intended to serve, the statute will be upheld. *City of Chicago* v. *Vokes,* 28 Ill.2d 475, 193 N.E.2d 40 (1964). Distinctions based on education and training have repeatedly been held to have a rational basis. *Watson* v. *Maryland,* 218 U.S. 173, 54 L.Ed. 987 (1910); *Crane* v. *Johnson,* 242 U.S. 339, 61 L.Ed. 348 (1917).

In *Watson* v. *Maryland,* this Court upheld a statute which exempted from its requirements physicians who had practiced prior to a certain date and were able to show that they had treated at least 12 persons in a professional way within a year of that date. The Court held that "[t]he selection of the exempted classes was within the legislative power, subject only to the restriction that it not be arbitrary or oppressive, and apply equally to all persons similarly situated." 54 L.Ed. at 990.

A statute requiring drugless practitioners to complete a specific course of study and pass an examination, which statute exempted those who professed to heal by prayer but not faith healers, did not violate equal protection guarantees. *Crane* v. *Johnson,* 242 U.S. 339, 61 L.Ed 348 (1917).

In *Henington* v. *State Board of Bar Examiners,* 60 N.M. 393, 291 P.2d 1108 (1956) a rule prohibiting admission to the state bar to other than graduates of A.B.A. approved law schools was found not to be a denial of equal protection. Statutes requiring special examination of chiropractors, (*Ellestad* v. *Swayze,* 15 Wash. 2d 281, 130 P.2d 349 (1942)) and licensing only upon presentation of a diploma from an "approved" medical school, (*Louisiana State Board of Medical Examiners* v. *Booth,* 76 So.2d 15 (1954)) have met constitutional requirements.

The classification of foreign trained physicians created by section 13a is rationally related to the state's purpose of insuring the quality of medical care provided in state hospitals. The statute applies equally to all persons within that class and, therefore, is neither discriminatory nor a denial of equal protection.

CONCLUSION

For all these reasons, appellees respectfully submit that the present appeal does not present a substantial federal question, and that the federal constitutional questions raised are moot. Appellees, therefore respectfully move this Honorable Court to dismiss this appeal or in the alternative, to affirm the judgment entered by the Illinois Supreme Court.

Respectfully submitted,

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October 19, 1976

No. 76-103

In the Supreme Court of the United States

OCTOBER TERM, 1976

DR. ARTURO RIOS, et al.,

Appellants,

vs.

NOLAN B. JONES, et al.,

Appellees.

Appeal from the Supreme Court of Illinois

BRIEF IN OPPOSITION TO MOTION

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LIST OF ADDITIONAL AUTHORITIES CITED

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To avoid repetition, we incorporate herein by reference thereto all of the material set out in the Jurisdictional Statement, with the following additions:

OPINIONS BELOW

The Opinion of the Supreme Court of Illinois, which is reproduced in Appendix C of the Jurisdictional Statement, is reported in 63 Ill. 2d 488 and in 348 N. E. 2d 825.

Addition to page 5 of Jurisdictional Statement

9a. As to the plaintiffs, all of whom acquired "tenure on the basis of merit and fitness" (Ill. Rev. Stat., 1975, Ch. 127, par. 63b108b), the Illinois statute providing for State civil service *expressly provides* that after they "have satisfactorily passed their probationary period" and "have been promoted," they "shall be continued *without further examination*". (Ill. Rev. Stat., 1975, Ch. 127, par. 63b117) (emphasis supplied.) The plaintiffs were induced by this express statutory provision to remain in the civil service of the State of Illinois and not to pursue more lucrative employment (A. 33).

Addition to footnote 3 at page 6 of Jurisdictional Statement

In *Adam* v. *Saenger,* 303 U. S. 59 (1938), the United States Supreme Court said, at page 63, that "this Court, in the exercise of its appellate jurisdiction to review cases coming to it from state courts, takes judicial notice of the law of the several states to the same extent that such notice is taken by the court from which the appeal is taken."

Addition to page 22 of Jurisdictional Statement

The case of *Bishop* v. *Wood,* is now reported in 48 L. Ed. 2d 684.

Addition to page 24 at conclusion of point I of Jurisdictional Statement

In *Santobello* v. *New York,* 404 U. S. 257 (1971), this Court reversed a decision of a State court because a prosecutor failed to keep his promise to an accused. In the case at bar the plaintiffs were induced (A. 33) to rely upon an Illinois statute which expressly assured them that their civil service positions which they acquired "*on the basis of merit and fitness*" would "*be continued without further examination*" (Ill. Rev. Stat., 1975, ch. 127, pars. 63b108b and 63b117). This was an assurance given to the plaintiffs by the Legislature and the Governor of the State of Illinois, and the plaintiffs relied thereon during their most productive years without choosing more lucrative employment. This assurance certainly deserves enforcement as much as, and logically more than, the assurance involved in *Santobello* v. *New York,* 404 U. S. 257, cited above.

CONCLUSION

In their motion, the appellees have completely failed to address themselves to the specific problem at hand, where the plaintiffs have been tested and re-tested over and over again and have received numerous and continuous merit promotions, as shown by the following facts which are a matter of public record:

1. Each plaintiff graduated from a medical school recognized and approved by the Illinois Department of Registration and Education (A. 34) as "schools which are reputable and in good standing." (Ill. Rev. Stat. 1975, Ch. 91, par. 14a)

2. Each plaintiff passed an examination in medicine of the government by which he was licensed. (A. 34)

3. Each plaintiff served an internship in an American hospital (A. 33) which hospital was approved by the Illinois Department of Registration and Education. (Ill. Rev. Stat., 1975, Ch. 91, par. 14a)

4. Each plaintiff passed the Illinois Civil Service test for physicians (A. 33-34) which, by virtue of the Illinois Statute (Ill. Rev. Stat., 1975, Ch. 127, par. 63b108b.1), included the following: "investigation of education; investigation of experience; test of cultural knowledge; test of

capacity; test of knowledge; test of manual skill; test of linguistic ability; test of character; test of physical fitness; test of psychological fitness."

5. Each plaintiff served a probationary period of one year. (Ill. Rev. Stat., 1975, Ch. 127, par. 63b108b.6)

6. Each plaintiff physician acquired "tenure on the basis of merit and fitness." (Ill. Rev. Stat., 1975, Ch. 127, par. 63b108b)

7. Each plaintiff was evaluated every year by the superintendent of the Illinois State institution in which he served and was found to be able and efficient as a physician.

8. Each plaintiff was promoted (A. 34) based on his "qualifications, record of performance, seniority and conduct." (Ill. Rev. Stat., 1975, Ch. 127, par. 63b108b.2)

9. Each plaintiff received annual salary increases (A. 34) based on "performance records." (Ill. Rev. Stat., 1975, Ch. 127, par. 63b108b.14)

10. **As to the plaintiffs, all of whom acquired "tenure on the basis of merit and fitness" (Ill. Rev. Stat., 1975, Ch. 127, par. 63b108b), the Illinois statute providing for State civil service expressly provides that after they "have satisfactorily passed their probationary period" and "have been promoted," they "shall be continued without further examination". (Ill. Rev. Stat., 1975, Ch. 127, par. 63b117) (Emphasis supplied.) The plaintiffs were induced by this express statutory provision to remain in the civil service of the State of Illinois and not to pursue more lucrative employment (A. 33).**

11. Each plaintiff is at all times subject to discipline and removal for cause by the Illinois Civil Service Commission. (Ill. Rev. Stat., 1975, Ch. 127, par. 63b111)

12. Each plaintiff's competency and ability as a physician has been confirmed by a number of years of experience, as is evident by the fact that no complaint was ever filed against any of the plaintiffs with the Illinois Civil Service Commission.

In this connection, the statement which this Court made in the recent case of *Usery* v. *Turner Elkhorn Mining Co.*, 49 L.Ed. 2d 752, at page 767, is applicable here:

> "It does not follow, however, that what Congress can legislate prospectively it can legislate retrospectively. The retrospective aspects of legislation, as well as the prospective aspects, must meet the test of due process, and the justifications for the latter may not suffice for the former."

For the reasons set forth in the Jurisdictional Statement and in this Brief in Opposition to Appellees Motion, the plaintiffs-appellants request that the Motion of the Appellees be denied and that probable jurisdiction be noted.

Respectfully submitted,

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